Office of the Public Sector Integrity Commissioner of Canada

Commissariat à l'intégrité du secteur public du Canada

2017–18
ANNUAL REPORT

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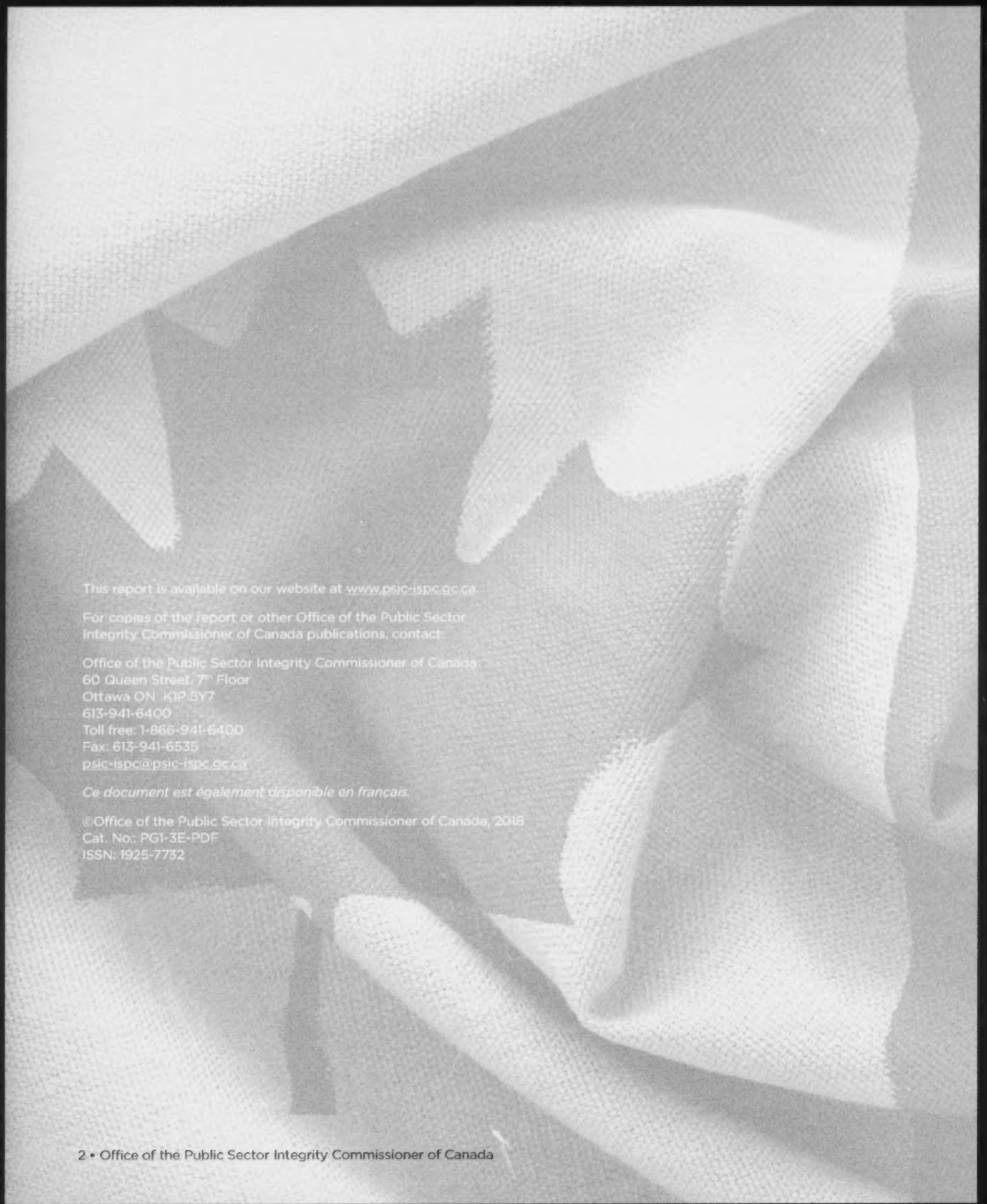

This report is available on our website at www.psic-ispc.gc.ca

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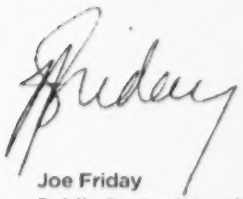
The Honourable George J. Furey, Q.C.
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

I have the honour of presenting you with the Office of the Public Sector Integrity Commissioner's eleventh annual report, which is to be laid before the House of Commons in accordance with the provisions of section 38 of the *Public Servants Disclosure Protection Act*.

The report covers the fiscal year ending March 31, 2018.

Yours sincerely,



Joe Friday
Public Sector Integrity Commissioner
Ottawa, June 2018

The Honourable Geoff Regan, P.C., M.P.
Speaker of the House of Commons
House of Commons
Ottawa, Ontario K1A 0A6

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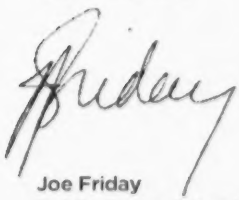

Joe Friday
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PUBLIC SERVANTS DISCLOSURE PROTECTION ACT

The federal public administration is an important national institution and is part of the essential framework of Canadian parliamentary democracy;

It is in the public interest to maintain and enhance public confidence in the integrity of public servants;

Confidence in public institutions can be enhanced by establishing effective procedures for the disclosure of wrongdoings and for protecting public servants who disclose wrongdoings, and by establishing a code of conduct for the public sector;

Public servants owe a duty of loyalty to their employer and enjoy the right to freedom of expression as guaranteed by the *Canadian Charter of Rights and Freedoms* and this Act strives to achieve an appropriate balance between those two important principles.

– Excerpt from the Preamble
Public Servants Disclosure Protection Act

OFFICE OF THE PUBLIC SECTOR INTEGRITY COMMISSIONER OF CANADA

OUR VISION

PSIC is a trusted organization where anyone can disclose wrongdoing in the federal public sector and make a complaint of reprisal in a confidential and safe manner. PSIC is recognized as an employer of choice where its employees are delivering high-quality services and act in the public interest.

OUR MANDATE

The Office of the Public Sector Integrity Commissioner of Canada contributes to strengthening accountability and increases oversight of government operations by providing:

- public servants and members of the public with an independent and confidential process for receiving and investigating disclosures of wrongdoing in, or relating to, the federal public sector, and by reporting founded cases to Parliament and making recommendations to chief executives on corrective measures; and
- public servants and former public servants with a mechanism for handling complaints of reprisal for the purpose of coming to a resolution including referring cases to the Public Servants Disclosure Protection Tribunal.

OUR VALUES

The Office operates under a set of values that defines who we are and how we interact with our clients and stakeholders:

RESPECT FOR DEMOCRACY

We recognize that elected officials are accountable to Parliament, and ultimately to the Canadian people, and that a non-partisan public sector is essential to our democratic system.

RESPECT FOR PEOPLE

We treat all people with respect, dignity and fairness. This is fundamental to our relationship with the Canadian public and colleagues.

INTEGRITY

We act in a manner that will bear the closest public scrutiny.

STEWARDSHIP

We use and care for public resources responsibly.

EXCELLENCE

We strive to bring rigour and timeliness as we produce high-quality work.

IMPARTIALITY

We arrive at impartial and objective conclusions and recommendations independently.

CONFIDENTIALITY

We protect the confidentiality of any information that comes to our knowledge in the performance of our duties.

This Annual Report is an important means of communicating with our many stakeholders and provides an opportunity to share our achievements and our challenges, as well as developments in our ongoing evolution as an independent Agent of Parliament and the external whistleblowing body for the federal public sector. We are still in what I might describe as the first generation of our existence, and we are focused on continuing development and positive change.

This report is by no means our only way to communicate. We actively participate in outreach and communications activities throughout the year, recognizing the importance of staying in touch with our stakeholders on a continuing basis.

I am optimistic that this report will encourage you to learn more about our Office and our work, including reading our 16 case reports and other key documents on our website. I also hope that it motivates you to learn more about whistleblowing in general, as people across Canada and throughout the world come to accept it—and to expect it—as an important and necessary component of the workplace and of society.

LEGISLATIVE REVIEW

Last year, I reported on the formal review of our legislation, the *Public Servants Disclosure Protection Act* (the Act), and I highlighted the 16 proposals for substantive change to the Act that I tabled as part of that review. Since that time, the Parliamentary Committee that conducted the review tabled a very thorough report on its work, including several recommendations for changes to the Act that included, directly or indirectly, the proposals I made. The government response to the report in October 2017, while acknowledging that improvements to the whistleblowing regime are required, did not propose any formal changes to the Act. I expressed my disappointment publicly at that time, as each of the proposals I made required, in my view, actual changes to the Act; changes can only occur if Government supports them.

This leaves my Office to continue to work with the Act in its current state, without the improvements that I proposed. I am certainly able to continue to do my job, but I remain disappointed that I cannot do it with the benefit of what I believe would have been a stronger and more responsive law that supports the ability of people to speak up when they feel something is wrong in the federal public sector, knowing that they will be protected to the fullest extent possible when they do so.

I remain hopeful that changes will occur, if not now, then as soon as possible in the future. I am confident that the hard work done by my Office, by the many stakeholders who appeared before the Parliamentary Committee, and by the Committee itself, will not be forgotten. An enhanced whistleblowing law is achievable.

CASE REPORTS ON FOUNDED WRONGDOING

This year, we tabled three reports on founded cases of wrongdoing. Each of our 16 case reports to date follows a thorough and fair investigation by my Office, and each one represents the courage and determination that a whistleblower had in bringing their concerns forward to my Office. When I find that wrongdoing has occurred, the Act requires that I must table a report in Parliament. This underscores the fact that our Office was established to deal with matters of serious public interest, ones that warrant being brought to both the attention of our federal lawmakers, as well as to the attention of the Canadian public.

This year, two of the founded cases[1] dealt with abusive behaviour by executives toward employees. One also included a finding that management had not responded sufficiently. These two cases provided an important opportunity to clarify our role in relation to harassment: While we do not generally deal with cases of individual harassment, as these are best dealt with through existing processes, in those instances in which behaviour is systemic, is repeated, or is left unaddressed, we will exercise our authority to investigate. And in every case, we will look at the role of management in addressing the issue, in accordance with their accountabilities and their obligations. Our decision to act in these cases is based on the undeniable right of all employees in the public sector to be treated with respect and to work in a healthy workplace.

The third case report we tabled this year involved unsafe working conditions where employees were not advised of the existence of risks to their hearing, and in some cases, employees were suffering from actual hearing loss. The finding was that a manager's actions constituted "a substantial and specific danger" to employees' health and safety, which is defined to be a wrongdoing under the Act. This case report underscored the obligation to ensure a safe workplace and to inform employees of any risks to their health and safety in a timely manner.

This year's three case reports focused important attention on the working conditions of federal employees, and on the responsibility to provide work environments that respect and protect both physical and mental health.

CULTURE SHIFT

The most recent Public Service Employee Survey indicates that there remains work to be done in building a healthier and more productive public service. While our small Office, a micro-organization within the public sector, plays an important role in addressing the concerns identified in the survey, a true change in the culture can only occur if there is a collective will and a collective effort to do so. I welcome and support all efforts throughout the public service to effect the kind of positive change that is needed.

The survey also applies to my Office, and I would like to express how proud I am of the results. While there is still work to be done, the results did indicate that people in my Office feel supported in their demanding work, that they work in a psychologically healthy environment, and that they feel confident in coming forward without fear of reprisal. I hope these survey results will help build confidence and trust in our Office, and that people feel they can more easily come forward, knowing that they will be dealing with people who themselves understand the value and importance of speaking up and speaking out.

OPERATIONAL ACTIVITIES

This year, we received 147 disclosures of wrongdoing, which was not only a significant increase from 81 the year before, and well above the average established in recent years, but also the highest number we have received since our Office was established.

We received 38 complaints of reprisal, which is our second-highest number since we were established, and a notable increase from 31 the previous year.

The reasons for these increases may be difficult to identify, as so many factors are at play. What we can identify is the fact that we launched an online form to make a disclosure or complaint of reprisal, and experience in other organizations indicates that this is generally followed by an increase in activity. Other factors, however, are also important to consider, including the fact that whistleblowing is talked about and is more evident in our culture than it was even a few years ago, whether through the #MeToo movement, or as a result of widespread media coverage of people coming forward with concerns, for example, about the protection of information on social media platforms. These events and developments share at least one goal with our Office: to normalize the act of coming forward when something is wrong. Further, the legislative review that took place last year, and the fact that we tabled three case reports in Parliament, also contributed to greater awareness of our Office and our work. Greater awareness does, I believe, translate directly into higher numbers of people coming forward.

[1] Findings of the Office of the Public Sector Integrity Commissioner in the Matter of an Investigation into Allegations of Wrongdoing at the Canadian Food Inspection Agency (September 2017) and Findings of the Public Sector Integrity Commissioner in the Matter of an Investigation into a Disclosure of Wrongdoing at the Correctional Service of Canada (March 2018).

OUR SERVICE STANDARDS

- To respond to at least 80% of general inquiries within 24 hours, and we did so in 97% of cases;
- To complete at least 80% of analyses of disclosures within 90 days, and we did so in 90% of cases;
- To complete 80% of investigations of both disclosures and reprisals within one year, and we did so in 86% of cases;
- To determine whether to deal with a complaint of reprisal within 15 days of receiving it (as specifically required by the Act), and we did so in 100% of cases.

In 2013, we developed service standards to guide the completion of our work in a timely manner. We met and exceeded these standards this year, despite the increase in numbers of both disclosures and complaints of reprisal. Timeliness is important in our work; people expect and deserve to have their cases dealt with quickly and thoroughly.

REQUESTS FOR FUNDING FOR LEGAL ADVICE

Also on the rise this year were the requests for legal assistance, which is a program under the Act that allows people, whether they are involved in a case, including as a witness, or even someone considering making a disclosure or reprisal complaint, to ask for funding to get outside legal advice. The maximum amount that I can grant is $3,000 per request. This year, 31 requests were approved, for a total over $48,000 in payments to support people's ability to seek independent legal advice to assist them in participating in the whistleblowing regime. To date, this is the highest amount spent on this program in any year. Clearly there is a need for this program, and in my view, there is also a need for the amounts to be increased as I stated in my proposals for legislative change that I mentioned above.

TRIBUNAL ACTIVITIES

Other activities of note this year include the fact that we referred one reprisal complaint to the Public Servants Disclosure Protection Tribunal, which is the judicial body responsible for hearing cases when our investigation determines there are reasonable grounds to believe a reprisal has taken place. The Tribunal also rendered its first decision on a case that was referred to it in a previous year, finding that reprisal had not occurred. This decision is currently under judicial review before the Federal Court of Appeal. Also, our Office's first case ever referred to the Tribunal was settled through the Tribunal's mediation process.

I invite you to consult the table of operational statistics included in this Annual Report to get a more complete picture of our activities over the past year, but I would like to draw particular attention to one more area of important activity that I want to highlight in assessing this year's achievements.

Conciliation

Last year, six reprisal cases settled as a result of conciliation. These were cases that were actively being investigated by my Office and might otherwise have been referred to the Tribunal for final judicial determination; however, through the process of conciliation, arranged for and paid by my Office, they were settled confidentially, in a timely manner and to the parties' satisfaction. This is the greatest number of conciliations in a single year for my Office, and it represents a significant increase in the total number of nine conciliations that we previously had. Providing a means for parties to a reprisal investigation to settle a case and move forward with their lives and their careers remains an important function of my Office and an important contribution to making positive change within the public service culture.

OUTREACH AND STAKEHOLDER ENGAGEMENT

Reaching out to provide people with clear and accurate information about our Office, about their options within the federal whistleblowing regime, and about what to expect when they make a disclosure or reprisal complaint, is an ongoing obligation, and it is also a continuing challenge. I see it as part of our Office's core responsibility. People have to be supported in making informed choices.

Our Office participated in 18 formal outreach events last year, ranging from international conferences to departmental all-staff meetings to events arranged by specific groups and communities of interest. We distributed more than 9,000 informational materials. This year, we will continue our outreach activities, supplementing them with enhancements to our website to improve visibility, accessibility and clarity of information. This will include a new video on questions to ask before making a protected disclosure.

In closing, I would like to emphasize my commitment to the success of the whistleblowing regime, and to identifying and advocating for ways to improve it, in the service of all Canadians. An external and independent office such as mine plays a pivotal role in supporting excellence and integrity in the federal public administration, and on behalf of my team of dedicated professionals, I commit to fulfilling that role as effectively as possible.

I invite you, as always, to contact us with your questions, with your comments, with your ideas. We are here to help you make an informed and confident decision about speaking up. Tell us. You are protected.

SUMMARY OF OPERATIONAL ACTIVITIES IN 2017–18

New Activities	
Number of general inquiries received	265
Number of new disclosures of wrongdoing received	147
Number of new reprisal complaints received	38
Overall Disclosure Activities	
Total number of disclosures of wrongdoing handled in 2017–18	**166**
Number of new disclosures of wrongdoing received	147
Number of disclosures of wrongdoing / investigations carried over from 2016–17	19
Number of files completed following an analysis	125
Number of investigations launched	15
Number of files resulting in a founded case of wrongdoing	3
Number of recommendations made by the Commissioner for founded cases of wrongdoing	9
Number of follow-ups made on recommendations	9
Number of recommendations actioned by Chief Executives	9
Overall Reprisal Activities	
Total number of reprisal complaints handled in 2017–18	**46**
Number of new reprisal complaints received	38
Number of reprisal complaints / investigations carried over from 2016–17	8
Number of files completed following an analysis	33
Number of investigations launched	9
Number of files settled through conciliation	6
Number of applications to the Tribunal	1